

Central Valley Regional Water Quality Control Board

REVISED HEARING PROCEDURE
FOR CEASE AND DESIST ORDER

PROPOSED TO BE ISSUED TO
NAPA BERRYESSA RESORT IMPROVEMENT DISTRICT
NAPA COUNTY

SCHEDULED FOR 22/23/24 SEPTEMBER 2010

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Background

Napa Berryessa Resort Improvement District (Discharger) owns and operates a wastewater treatment facility that serves the Berryessa Highlands Subdivision and the U.S. Bureau of Reclamation's concession (formerly known as Steele Park Resort, now known as Lupine Shores). The facility is located on the southeastern side of Lake Berryessa. The wastewater system provides secondary treatment of domestic wastewater using an extended aeration activated sludge plant and aeration basins, clarifiers, and synthetic lined holding basins. Disinfected wastewater is discharged to remote spray fields located above a tailwater pond.

The Discharger's wastewater system is regulated by Waste Discharge Requirements (WDRs) Order 95-173 for a monthly average discharge not to exceed 50,000 gallons per day. The Discharger's wastewater system has a history of capacity problems that have resulted in violations of the WDRs. Due to the significant inflow/infiltration flows during rain events, the volume of influent exceeds that which the Discharger's wastewater system is physically capable of storing and disposing. In 2006, the Central Valley Water Board issued Cease and Desist Order (CDO) R5-2006-0113, which required the Discharger to make physical improvements and imposed a restriction on new connections to the sewer system until the improvements were completed. The Discharger has not complied with the time schedule, and approximately 1.4 million gallons of treated wastewater spilled to surface waters in early 2010. Therefore, the Central Valley Water Board's Prosecution Team has proposed a revised CDO that requires additional studies and provides new timelines for physical improvements. The proposed CDO would continue the collection system restriction imposed by CDO R5-2006-0113. This restriction may prohibit the facility from accepting waste from Lupine Shores (which is currently disconnected from the wastewater system) until the facility improvements have been completed.

Upon issuance of a CDO, connection prohibitions apply retroactively, as specified in California Code of Regulations, title 23, section 2244.1(a). **Because the connection restriction in CDO R5-2006-0113 remains in effect, no new structures may connect to the collection system except those authorized by a building permit (or equivalent final local agency approval) issued prior to 12 September 2006, which is the date**

that the Board transmitted notice of its intent to consider CDO R5-2006-0113.

Limited additional exceptions apply as described in the draft C&D Order.

A hearing is currently scheduled to be conducted before the Central Valley Water Board during its 22/23/24 September 2010 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the proposed CDO and connection restriction. At the hearing, the Central Valley Water Board will consider whether to issue the CDO as proposed, issue the CDO with minor modifications, postpone the matter to a future Board meeting, or refrain from issuing a CDO. The public hearing on will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Central Valley Water Board meeting agenda. The meeting will be held at

11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Central Valley Water Board's web page at:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings

Hearing Procedure

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been proposed by the Central Valley Water Board's Prosecution Team for adjudication of the matter, and is subject to further revision by the Central Valley Water Board's Advisory Team or the Board Chair. The general procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and are also available at:

<http://www.waterboards.ca.gov>

or will be made available upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648, subdivision (b) and herein, Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 16 AUGUST 2010, OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

The Discharger shall contact the Prosecution Team to try to resolve objections regarding due dates, the hearing date and hearing time limits BEFORE submitting objections to the Advisory Team.

Hearing Participants

Participants in this proceeding are designated as either “parties” or “interested persons.” Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff or others, at the discretion of the Central Valley Water Board.

The following participants are hereby designated as parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. Napa Berryessa Resort Improvement District
3. U.S. Bureau of Reclamation and Pensus Lake Berryessa Properties, LLC

The Prosecution Team proposes to combine testimony of the U.S. Bureau of Reclamation and Pensus Lake Berryessa Properties, LLC, as they share an interest in the Lupine Shores development project. U.S. Bureau of Reclamation and Pensus Lake Berryessa Properties, LLC may request that they be considered separate Designated Parties by providing justification to the Advisory Team by 5 p.m. on **16 August 2010**.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received no later than 5 p.m. on **16 August 2010**, by the Advisory Team attorney (contact information listed below). The request shall include an explanation of the basis for status as a designated party (i.e., how the issues to be addressed in the hearing and the potential actions by the Central Valley Water Board affect the person, and the need to present evidence or cross-examine witnesses), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person’s interest. The Central Valley Water Board’s Advisory Team shall have the discretion whether or not to grant the requests for Designated Party status.

Primary Contacts

Advisory Team:

Kenneth Landau, Assistant Executive Officer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
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Alex Mayer, Staff Counsel
State Water Resources Control Board, Office of Chief Counsel
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Prosecution Team:

Pamela Creedon, Executive Officer
Wendy Wyels, Environmental Program Manager
Anne Olson, Senior Water Resources Control Engineer
Guy Childs, Associate Engineering Geologist
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Discharger:

Don Ridenhour, District Engineer
Napa Berryessa Resort Improvement District
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Designated Parties:

Dan Kolda
United States Bureau of Reclamation
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Georgi Maule-Ffinch
Pensus Lake Berryessa Properties, LLC
4935 East Valley Vista Lane
Paradise Valley, AZ 85253
Phone: (602) 230-9000
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Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Central Valley Water Board (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Mr. Kenneth Landau and Mr. Alex Mayer. Members of the Prosecution Team are: Ms. Pamela Creedon, Ms. Wendy Wyels, Ms. Anne Olson, Mr. Guy Childs, and Mr. Patrick Pulupa. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Pamela Creedon regularly advises the Central Valley Water Board in other, unrelated matters, but is not advising the Central Valley Water Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Central Valley Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the draft CDO between a member of a designated party or interested person on the one hand, and a Central Valley Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

The following communications to the Advisory Board must be copied to all designated parties: Objections to this Hearing Procedure; requests for modifications to this Hearing Procedure; requests for designated party status; and all written evidence, legal argument, comments or policy statements from Designated Parties. This is not an all-inclusive list of ex parte communications.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined **45** minutes to present evidence (including evidence presented by witnesses called by the designated party), cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Participants who would like

additional time must submit their request to the Advisory Team so that it is received by 5:00 p.m. on **2 September 2010**. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Central Valley Water Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments or legal argument require extra time, and why the Discharger could not adequately provide the testimony, comments or legal argument in writing before the hearing.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence and Policy Statements

Each designated party must submit the following information in writing in advance of the hearing:

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Board members will generally not receive copies of materials incorporated by reference, and the referenced materials are generally not posted on the Board's website.
2. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony. (This information is not required for rebuttal witnesses or rebuttal testimony.)
3. The qualifications of each expert witness, if any. (This information is not required for rebuttal witnesses.)

The Prosecution Team shall submit a list of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the CDO or Staff Report, and shall submit the witness information required under items 2-3 for all witnesses, including staff. The Prosecution Team shall submit one hard copy and one electronic copy of this information to Kenneth Landau and one electronic copy to Alex Mayer by the deadline listed below.

Napa Berryessa Resort Improvement District and U.S. Bureau of Reclamation/Pensus Lake Berryessa Properties, LLC shall submit comments regarding the proposed CDO, along with any additional supporting evidence not cited by the Central Valley Water Board's Prosecution Team, by the deadline listed below. For these comments and evidence, 3 hard copies and one electronic copy shall be submitted to Kenneth Landau, and one electronic copy shall be submitted to Alex Mayer.

If additional parties are granted Designated Party Status by the Board's Advisory Team, the Board's Advisory Team will provide such parties additional deadlines to submit their

comments and/or evidence. All Designated Parties shall have the chance to respond to these comments and evidence at the Board Hearing.

Copies: Board members will receive copies of all materials submitted in hard copy or electronic format. The Board's copies will be printed in black and white from the designated parties' electronic copies. Designated parties who are concerned about print quality of all or any part of their written materials should submit a high-resolution pdf or provide an extra nine paper copies for the Board members. For items with voluminous submissions, Board members may receive copies electronically only. Electronic copies are also posted on the Board's website.

Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy and mailing center. However, the Board will not reject materials solely for failure to provide electronic copies.

Other Matters: By **30 August 2010**, the Prosecution Team shall prepare a summary agenda sheet ("buff sheet") and will respond to comments raised by the Designated Parties. Both the buff sheet and the responses will be included in the Board members' agenda package and will be posted on the internet. These documents shall clearly state that they were prepared by the Prosecution Team. The Prosecution Team shall provide copies to all parties via mail or email.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by **24 August 2010** to be included in the Board's agenda package. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Central Valley Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Designated parties must provide the Advisory Team with a printed copy of such materials at or before the hearing, for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Evidentiary Documents and File

The draft CDO and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at:

http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml

Although the web page is updated regularly, to assure access to the latest information, you may contact Wendy Wyels (contact information above).

Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

IMPORTANT DEADLINES

(Note: The Advisory Team will generally adhere to this schedule unless the discharger submits a waiver and it is accepted.)

All required submissions must be received by 5:00 p.m. on the due date.

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| 10 August 2010 | Prosecution Team issues draft CDO to Discharger and the public, publishes Public Notice, and issues proposed Hearing Procedure |
| 12 August 2010 | Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above. |
| 16 August 2010 | Objections due on proposed Hearing Procedure. Hearing Procedure becomes final if no objections are received. |
| 16 August 2010 | Deadline for submission of requests for designated party status. |
| 24 August 2010 | Remaining Designated Parties' deadline to submit all information required under "Evidence and Policy Statements," above. This includes all written comments regarding the draft CDO. |
| 24 August 2010 | Interested Persons' comments are due. |
| 30 August 2010 | Prosecution Team shall submit the "buff sheet" and written responses to comments received by the 24 August 2010 deadline to the Advisory Team and all other Designated Parties and Interested Persons. |
| 2 September 2010 | Requests for additional hearing time (see Hearing Time Limits, above). |
| 22/23/24 September 2010: Hearing | |